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Principal Lawyer: Matter №: Jeremy Goldman JEG:JEG:140809:lh

9 April 2014

The General Manager Adjudication Branch Australian Competition and Consumer Commission GPO Box 3131 Canberra ACT 2601

Email:

adjudication@accc.gov.au

Notification of Exclusive Dealing – Third Line Forcing Eat Now Services Pty Ltd (ACN 138 659 588) Catchoftheday.com.au Pty Ltd (ACN 149 779 939)

I confirm that I act for Eat Now Services Pty Ltd and Catchoftheday.com.au Pty Ltd.

Please find enclosed the notification form for each of the applicants.

I also <u>attach</u> confidential details regarding the payment of the lodgement fees for the 2 notifications (in total \$200).

If you have any questions or require further information, please do not hesitate to contact me.

Jeremy Goldman KLIGER PARTNERS

Form G

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

(a) Name of person giving notice:

N97358

Eat Now Services Pty Ltd (ACN 138 659 588) ("Eat Now") of 767 Springvale Road, Mulgrave, Victoria 3170.

(b) Short description of business carried on by that person:

Catchoftheday.com.au Pty Ltd (ACN 149 779 939) ("Catchoftheday") provides an online platform for retail online shopping offering special deals for a limited time to online customers.

Eat Now Services Pty Ltd (ACN 138 659 588) ("Eat Now"), which is one of Catchoftheday's related entities, offers an online platform that allows consumers to order and pay for food and beverages from restaurants and take-away food outlets that are members of the Eat Now service.

(c) Address in Australia for service of documents on that person:

C/- Jeremy Goldman

Kliger Partners

Level 2, 280 Queen Street

Melbourne, VIC 3000

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Food services.

(b) Description of the conduct or proposed conduct:

Catchoftheday and Eat Now offer to Eligible Customers of Paypal Australia Pty Ltd (ACN 111 195 389) ("PayPal") a voucher that the customer can use for the payment of food ordered through Eat Now.

Eligible customers are PayPal's customers that ("Eligible Customers"):

- Becomes a PayPal customer and signs up to the PayPal User Agreement,

- Downloads and uses an application provided by PayPal to order the food ("PayPal App").

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

Eligible Customers.

(b) Number of those persons:

(i) At present time:

2.6 million emails/offers will be sent out.

(ii) Estimated within the next year:

(Refer to direction 6)

Same as above

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not known

4. Public benefit claims

(a) Arguments in support of notification:

The described conduct will benefit the public because:

- It allows any person who order food through Eat Now using the PayPal App to obtain food at favourable prices,
- It will promote competition in the relevant market by encouraging competitors to make similar offers.

(b) Facts and evidence relied upon in support of these claims:

As above.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The relevant market is the provision of food services.

In particular, the conduct relates to online marketing channels that allow consumers to order food online.

In Australia there are more than 15 online platforms that provide access to food deals. Those competitors provide substitutes to the services provided by Eat Now.

As a result, the market is highly competitive and the conduct of Catchoftheday and Eat Now will not have a negative impact on its competition.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

The described conduct does not represent a detriment to the public as:

- There are other online providers,
- Customers remain free to order food through Eat Now without becoming an Eligible Customer,
- Customers of Catchoftheday, Eat Now and PayPal are free to access to food services from other providers,
- The conduct does not limit other providers' capacity to compete against Catchoftheday and Eat Now,
- Other providers could implement similar arrangements for the provision of food services.

(b) Facts and evidence relevant to these detriments:

Please refer to <u>Attachment A</u> containing copies of the webpages from some of the parties' competitors.

7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Jeremy Goldman Kliger Partners Level 2, 280 Queen Street Melbourne, VIC 3000

Dated....

G: 11 / 1 16 Cd 1: 4

Signed by/on behalf of the applicant

Jeremy Goldman
Partner
KLIGER PARTNERS

Eat Now Services Pty Ltd ACN 138 659 588

Attachment A

Form G Notification of Exclusive Dealing

Copies of the webpages from some of the parties' competitors

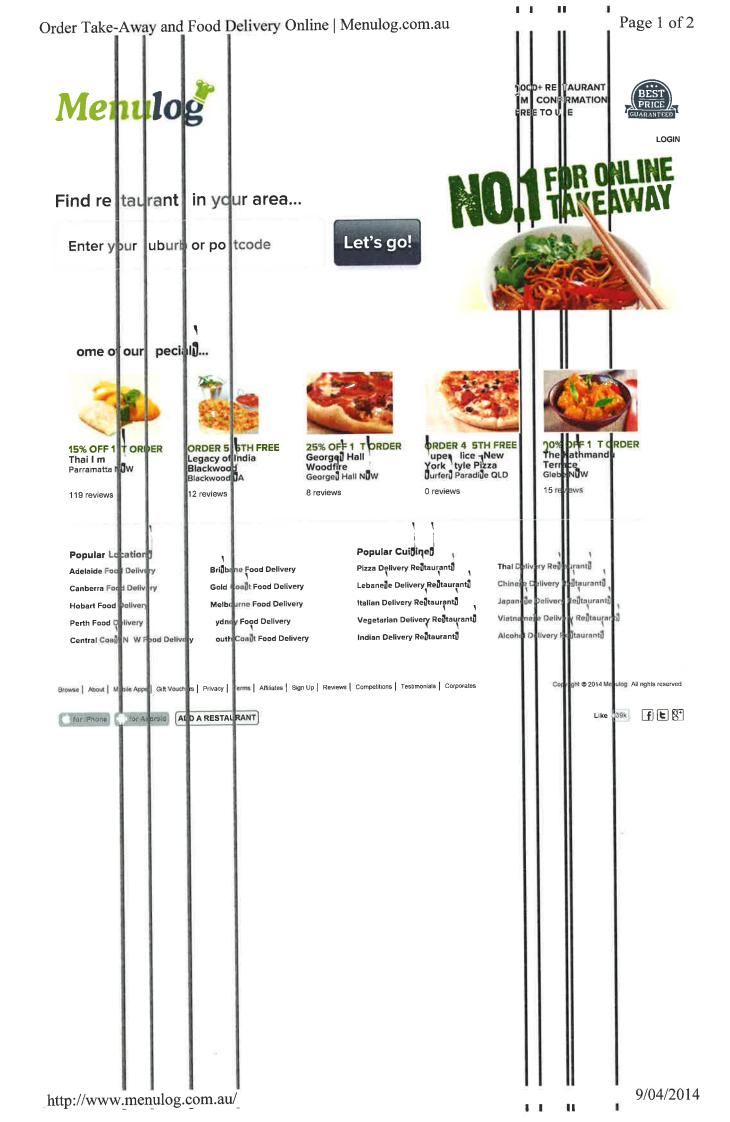
This is Attachment A of 5 pages referred to in Form G - Notification of Exclusive Dealing

Dated....

Signed by/on behalf of the applicant

Jeremy Goldman
Partner

KLIGER PARTNERS









- Home
- Order Online
- Dining
- Register
- Login







Little Nyonya

10% off

Plckup only





THE ROTI MAN

20% off

Pickup only







itakeaway

itakeaway is an Australian owned and operated on-line takeaway food directory, with our main focus on providing easy-to-use technology for ordering takeaway food in Australia and New Zealand.

We provide our advanced technology in a variety of portals:- home computer, iPhone, iPad, iPod Touch & Android smart phones,

itakeaway recognises that the security and privacy of your personal information is paramount and that's why we use eWAY® and Go Daddy®, both recognised around the world for providing the highest standard of 256 bit security encryption for on-line transaction.

Information

Home News Terms and Conditions Contact Us Sitemap

Extras

Browse Feedback Facebook Twitter

Fast Food Delivery!

How Does It Work

Log In

Find Local Restaurants

Type Your Postcode

Order Delivery and pick up

Free to use Time confirmation Read Reviews









Recently Added

La Piazza Allegra



For the best takeaway in Elsternwick try La Piazza Allegra, Order pizza online and you won't be disappointed, pick up and delivery available

Curry Village

The best Indian in Wollongong West. Order your pick up and delivery take away order online from Curry Village

Korean Burger & Chicken



ooking for stand out Burgers takeaway in Woolloongabba, you can't go past Korean Burger & Chicken offerring pick up and delivery

Pizza Town



For amazing take away Pizza order online from Pizza Town Currenity offering pick up and deliverv

Curry Bandit Indian Restaurant



Looking for stand out Indian takeaway in Waterford West, you can't go past Curry Bandit Indian Restaurant offerring pick up and delivery

Babu BarBurger With Balls



The best Burgers in Windsor Order your pick up and delivery take away order online from Babu BarBurger With Balls

Indian Curry Garden



For amazing take away Indian order online from Indian Curry Garden, Currenity offering pick up and delivery



Flamin' Grill is offerring pick up, Indian takeaway in Flamin' Grill has never been so quick and easy. So place your take away order online.

Bollywood Bites



Bollywood Bites is offerring pick up and delivery. Indian takeaway in Bollywood Bites has never been so quick and easy. So place your take away order online.

Recently Reviewed

Babu BarBurger With Balls ***

Babu BarBurger With Balls ***

Babu BarBurger With Balls

Northway Takeaway

La Pizzetta Kingsbury *** Babu BarBurger With Balls

Babu BarBurger With Balls

> Newport Pizza BBBBE

Babu BarBurger With Balls * * *

Gonzo's Take Away Food ***

Babu BarBurger With Balls

Pinky's Pizza

Babu BarBurger With Balls **3444**

> Godfathers Pizza

Babu BarBurger With Balls **AHABE**

Babu BarBurger With Balls ***

Babu BarBurger With Balls DOL

Warnbro Fish & Chips

Babu BarBurger With Balls

Good To Go (Mansfield) COLOR

Moolanda Fish & Chips

Babu BarBurger With Balls

States And Regions

Victoria

Melbourne Region South Eastern Victoria Northern Victoria South Western Victoria

Australian Capital Territory

Canberra

New South Wales

Sydney Region

Central & North Coasts - Newca

Illawarra & South Coast

Regional NSW

Queensland

Brisbane Region

Central & Western

Northern QLD South Australia

Adelaide Mid North SA

Spencer Gulf & West Coast

Perth Region Northern WA South Western

South Eastern

Far North SA South SA

Central Coastal

South East & Central

Western Australia

Tasmania Northern Territory

Northern Territory

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Form G

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(b) Short description of business carried on by that person:

Catchoftheday provides an online platform for retail online shopping offering special deals for a limited time to online customers.

Through Eat Now Services Pty Ltd (ACN 138 659 588) ("Eat Now"), which is one of Catchoftheday's related entities, Catchoftheday also offers an online platform that allows consumers to order and pay for food and beverages from restaurants and take-away food outlets that are members of the Eat Now service.

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C/- Jeremy Goldman

Kliger Partners

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7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Jeremy Goldman

Kliger Partners

Level 2, 280 Queen Street

Melbourne, VIC 3000

Dated....

Signed by/on behalf of the applicant

Jeremy Goldman Partner

KLIGER PARTNERS

Catchoftheday.com.au Pty Ltd ACN 149 779 939

Attachment A

Form G Notification of Exclusive Dealing

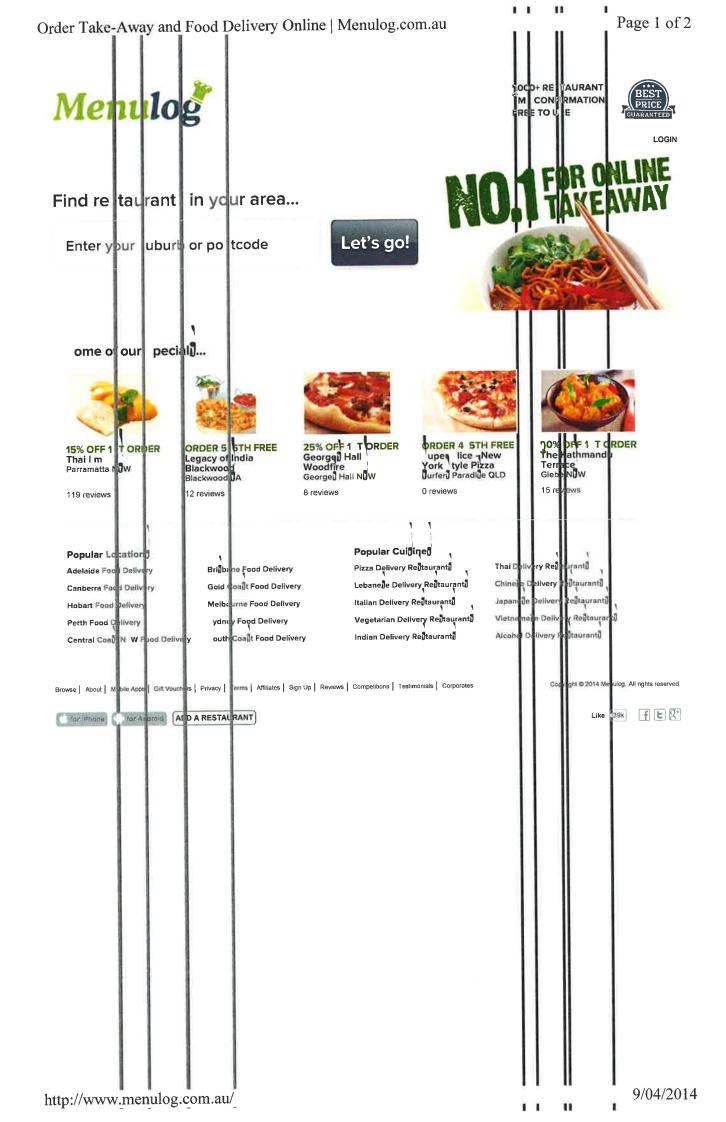
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This is Attachment A of 5 pages referred to in Form G - Notification of Exclusive Dealing

Dated.

Signed by/on behalf of the applicant

Jeremy Goldman Partner KLIGER PARTNERS









- Home
- Order Online
- Dining
- Register
- Login

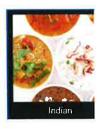
















Little Nyonya
10% off
Pickup only

THE ROTI MAN
20% off
Takeaway Menu
Pickup only

itakeaway

itakeaway is an Australian owned and operated on-line takeaway food directory, with our main focus on providing easy-to-use technology for ordering takeaway food in Australia and New Zealand.

We provide our advanced technology in a variety of portals:- home computer, iPhone, iPad, iPod Touch & Android smart phones,

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Information

Home News Terms and Conditions Contact Us Sitemap

Extras

Browse Feedback Facebook Twitter

Fast Food Delivery!

How Does It Work

Log In

Find Local Restaurants

Type Your Postcode

Order Delivery and pick up

Free to use Time confirmation Read Reviews









Recently Added

La Piazza Allegra



For the best takeaway in Elstemwick try La Piazza Allegra, Order pizza online and you won't be disappointed, pick up and delivery available

Curry Village



The best Indian in Wollongong West Order your pick up and delivery take away order online from Curry Village

Korean Burger & Chicken



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For <mark>amazing take away</mark> Pizza order online from Pizza Town Currenlty offering pick up and

Curry Bandit Indian Restaurant



Looking for stand out Indian akeaway in Waterford West, you can't go past Curry Bandit Indian Restaurant offerring pick up and delivery

Babu BarBurger With Balls



The best Burgers in Windsor Order your pick up and delivery take away order online from Babu BarBurger With Balls

Indian Curry Garden



For amazing take away Indian Curry Garden Indian order online from Indian Curry Garden. Currenity offering pick up and delivery

Flamin' Grill



Flamin' Grill is offerring pick up Indian takeaway in Flamin' Grill has never been so quick and easy. So place your take away order online.

Bollywood Bites



Bollywood Bites is offerring pick up and delivery Indian takeaway in Bollywood Bites has never been so quick and easy. So place your take away order online.

Recently Reviewed

Babu BarBurger With Balls ***

Babu BarBurger With Balls * * * *

Babu BarBurger With Balls

Northway Takeaway es (

La Pizzetta Kingsbury ***

Babu BarBurger With Balls ***

Babu BarBurger With Balls

> **Newport Pizza**

Babu BarBurger With Balls * * *

Gonzo's Take Away Food ***

Babu BarBurger With Balls

Pinky's Pizza

Babu BarBurger With Balls

Godfathers Pizza

Babu BarBurger With Balls Babu BarBurger With Balls

* * * * Babu BarBurger With Balls

ant Warnbro Fish & Chips

Babu BarBurger With Balls

Good To Go (Mansfield) HHE

Moolanda Fish & Chips

Babu BarBurger With Balls

States And Regions

Victoria

Melbourne Region South Eastern Victoria

Northern Victoria South Western Victoria

Australian Capital Territory

Canberra

New South Wales

Sydney Region

Central & North Coasts - Newca

Regional NSW

Queensland

Brisbane Region

Central & Western Northern QLD

Central Coastal

Adelaide

Mid North SA

Spencer Gulf & West Coast

Perth Region

Northern WA South Western South Eastern

South Australia Far North SA

South SA

Illawarra & South Coast

Western Australia

South East & Central

Tasmania **Northern Territory**

Northern Territory

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